IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 368 OF 1995

1. Smt. Manda Satish Kakade
2. Smt. Chhabubai R. Kakade
3. Satish Kakade
4. Durga Satish Kakade ..Appellants

versus

1. Bapurao Kondiba Parte & Jadhav
2. Balkrishna Parbati Gade
3. The Oriental Insurance Co. Ltd. ..Respondents

Mr. P. Rane h/f. R. V. More for the Appellants.
None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 24TH JANUARY,2005

ORAL ORDER :

1. Heard learned counsel for the appellants - original claimants. Nobody is present for the Respondents.

2. Satish Kakade husband of the appellant No.1 died in an ccident. He was proceeding on his Bajaj M-80 on 30.12.1989 which was bearing Registration No.MXC 5929. A jeep bearing Registration No.MMX

9154 was coming from the opposite side on Satara Koregaon Road near the speed breakers at about 9 p.m. at that time there was collusion between Bajaj M-80 and jeep and Satish Kakade died on the spot leaving behind his wife, mother and two children. The claim petition claiming Rs.3 lacs was filed. The Tribunal found that it was a case of contributory negligence and awarded only Rs.62,000/-.

3. Paragraph 10 of the Judgment is challenged by the appellants on the ground that the monthly pecuniary loss was wrongly calculated, that nothing was given to the claimants on account of shock on account of the accident and that a meagre sum of Rs.1,000/- was granted towards funeral expenses.

4. The Tribunal accepted that the monthly earning of the deceased was Rs.1,230/=, the family had to leave Government quarter because of the death of Satish Kakade, multiplier of 20 was adopted but monthly pecuniary loss was assessed at Rs.600/=. That was obviously wrong. From Rs.1,230/- per month, 1/3rd could have been deducted for the expenses of the deceased and remaining 2/3rd i.e. Rs.810/- should have been taken as monthly loss. By applying the multiplier of 20 it comes to Rs.1,94,400/-, then Rs.10,000/- only was granted

towards consortium. This is not a proper amount because the deceased was 32 years of age, his wife, mother and children were dependant and Rs.25,000/- on that count should have been awarded. Similarly towards funeral expenses the Tribunal granted Rs.1,000/- only, that was also not proper. Rs.5,000/- minimum should have been granted. Therefore compensation that the clainatns were entitled comes to Rs.1,94,400/- + Rs.25,000/- + Rs.5,000/- it comes to Rs.2,24,400/-.

5. In the result, the appeal is partly allowed. Compensation awarded to the appellants is Rs.2,24,400/- inclusive of Rs.62,000/- granted by the Tribunal. It will carry the same rate of interest i.e. 12% per annum from the date of claim petition till realisation of whole of the amount. Other side to bear cost of this Appeal.

24.1.2005 (D.G. DESHPANDE,J.)